

CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Bail

Section 17 - Bail conditions: remote monitoring of restriction on movements

142. **Section 17** inserts into the 1995 Act new sections 24A to 24E.

New section 24A – bail conditions: remote monitoring of restrictions on movements

143. New section 24A(1) provides that where a person has been refused bail the court, on that person's application, shall consider whether the imposition of a movement restriction condition with a remote monitoring requirement would enable the court to release that person on bail. This provision therefore only comes into play when a court has considered and rejected the option of bail on other conditions and concluded that the person should be remanded in custody.
144. Subsections (2) to (6) provide an additional power to enable the sheriff court or the High Court to impose a remote monitoring requirement as an additional condition of bail at its own discretion in a case where the person appears on indictment or petition charged with, or convicted (pre-appeal) of, murder or rape and the court is granting bail subject to a movement restriction condition. In post-conviction cases of murder and rape, the court will have to justify its non use where bail is granted subject to a movement restriction condition. In cases where the charge is reduced the accused has the right to have the remote monitoring requirement revoked unless there are exceptional circumstances which justify its retention. The prosecutor has the right to be heard before the requirement is removed allowing the court to take into consideration any other information.
145. Subsection (7) gives the accused and the prosecutor an opportunity to be heard before the court decides whether to impose a remote monitoring requirement.
146. Subsections (8) and (9) require the court before imposing a remote monitoring requirement to explain to the accused the effect of the requirement and the consequences which may follow any failure to comply. The accused has to confirm that he or she understands how the order will work.
147. Subsections (10) and (11) provide that the court, before imposing or varying the remote monitoring requirement, should also obtain and consider information, from the local authority, about places where an applicant may be required to remain, or avoid, under the movement restriction condition and the attitudes of persons affected by the enforced presence of the accused, for example, the family, landlord or householder. That information will only be supplied by the local authority to ensure as far as possible

that any information provided is impartial. Subsection (12) provides that the court may adjourn the proceedings for this purpose.

148. Subsection (13) requires the clerk of court to send a copy of any remote monitoring requirement order under section 24A(1) or 24A(2) to the person (referred to as “the monitor”) who will be responsible for the remote monitoring of the person’s movements. The clerk must also notify the monitor of any variation or revocation of a remote monitoring requirement.
149. Subsections (14) and (15) provide that where the monitor becomes aware that the person has breached a condition imposed on bail restricting his movements he shall immediately inform a constable. Breach of the movement restriction monitoring condition is a breach of a condition of bail. The constable will then seek to exercise his existing powers under section 28 of the 1995 Act (which provides for the arrest of an accused who has breached bail) to arrest the person. Where a constable has arrested such a person on the grounds that he suspects that the person has breached the condition he shall immediately inform the monitor.
150. Subsection (16) provides that the right to apply for bail subject to a remote monitoring requirement does not affect the accused person’s existing right to appeal against a refusal to grant bail. Subsection (17) also provides that when a person is refused bail under section 23 and then under section 24A(1) (bail with a remote monitoring requirement) any appeal against the decision to refuse bail under section 24A(1) will be combined with any appeal against refusal of bail under section 23. This is to avoid the possibility of two appeals running separately on the grounds that there are in fact two decisions.
151. Subsection (18) defines the terms “a movement restriction condition”, “a remote monitoring requirement” and the “accused” used in sections 24A and 24B to 24E. Subsection (19) defines the term “monitor”.

New sections 24B to 24E

152. These replicate, for remote monitoring requirements imposed under new section 24A(1) or (2), the provisions relating to restriction of liberty orders under section 245A of the 1995 Act..
153. The provisions cover:
 - the power to impose remote monitoring requirements (s.24B)
 - monitoring of compliance (s.24C)
 - remote monitoring arrangements (s.24D)
 - documentary evidence in proceedings for breach of bail conditions that are subject to remote monitoring (s.24E).
154. Additionally section 24D(3)(b) provides that the person subject to the remote monitoring requirement shall not tamper with the monitoring equipment or knowingly allow it to be tampered with or intentionally damaged.

Section 18 - Bail review: rights of prosecutor to be heard

155. **Section 18** widens the right of the prosecutor to be heard in certain situations where the court is considering bail issues.
156. Subsection (2) amends section 25 of the 1995 Act so as to require an accused to intimate any application to alter his bail address in writing to the Crown Agent and requires the court to give the prosecutor an opportunity to be heard before determining the application. At present, although the prosecutor will normally be present in the bail court, the court does not have to hear the Crown’s views.

*These notes relate to the Criminal Procedure (Amendment) (Scotland)
Act 2004 (asp 5) which received Royal Assent on 4th June 2004*

157. Subsection (3) amends section 30 of the 1995 Act so as to require an accused or an appellant convicted on indictment who makes an application for a review of either the refusal of bail or of the conditions imposed to intimate the application to the Crown Agent. It also provides that the prosecutor must have the opportunity of being heard and that in the case of an application by an appellant the application must be heard not less than seven days after the date of intimation.
158. Subsection (4) amends section 31 of the 1995 Act so as to provide that where the prosecutor has applied for a bail review the hearing on the application shall be not more than seven days after the day on which the application is made. This time limit is consistent with that in new section 105A (as inserted by section 66 of the Criminal Justice (Scotland) Act 2003) which provides for the appeal by a prosecutor against the grant of bail pending appeal to a convicted person to be heard within 7 days. It is designed to ensure that the period of uncertainty for the convicted person is kept as short as is practicable.